

DIA HAS REVIEWED

ADMINISTRATION

Freedom of Information Program

DIAR 12-39, 24 March 1992, is changed in order to implement the Attorney General's new Freedom of Information Act policy memorandum of October 4, 1993. That memorandum rescinded the Department of Justice's 1981 guidelines under which the Department of Justice would defend federal agencies being sued because they withheld information requested under the Freedom of Information Act. The Department of Justice will no longer defend an agency's decision to withhold information merely because there is a "substantial legal basis" for doing so. Instead, the Department of Justice will apply a presumption of disclosure when determining whether or not to defend the agency's nondisclosure decision. Agencies must now set out in detail for the Department of Justice, the anticipated harm that will be caused if the requested information is released, and demonstrate that the anticipated harm is reasonably expected to occur.

a. Add the following paragraph after paragraph 6.g.:

h. All DIA elements responding to FOIA requests will follow the specific FOIA processing procedures set forth in enclosure 3, "FOIA Processing Procedures."

b. Add Enclosure 3, "FOIA Processing Procedures."

SG1J

Chief of Staff

Enclosure

Enclosure 3 to DIAR 12-39

DISTRIBUTION D & G

ENCLOSURE 3

ENCLOSURE 3

DIAR 12-39A

FOIA PROCESSING PROCEDURES

1. YOU MUST SEARCH ALL OFFICE FILES AND DATABASES, AUTOMATED OR MANUAL, UNDER THE CONTROL OF YOUR ACTIVITY FOR RESPONSIVE DOCUMENTS. ALL SPECAT AND OTHER SPECIAL COMMUNICATION CHANNELS MUST BE SEARCHED.

2. MAKE A WRITTEN RECOMMENDATION AS TO THE RELEASABILITY OF THE RESPONSIVE DOCUMENTS LOCATED AS A RESULT OF YOUR SEARCH OR FORWARDED TO YOU FOR RELEASABILITY REVIEW.

Identify the specific FOIA or Privacy Act exemption, or if applicable, the particular paragraph of Executive Order 12356, that permits withholding.

3. THE REVIEWER MUST RELEASE ANY PORTIONS OF THE DOCUMENT THAT CAN REASONABLY BE SEGREGATED FROM THE PORTIONS WHICH ARE EXEMPT FROM RELEASE.

If, however, the nonexempt material is so "inextricably intertwined" that disclosure of it would "leave only essentially meaningless words and phrases," the entire sentence, paragraph, or document, as appropriate, can be withheld.

Review of the information should be such as to lean toward release of as much data as possible without compromising, among other things, "sources and methods." If material is to be withheld, there must be a "reasonably foreseeable harm" which could result from disclosure.

4. THE REVIEWER MUST PROVIDE A WRITTEN NARRATIVE STATING SPECIFICALLY WHAT HARM WILL BE CAUSED IF THE REQUESTED INFORMATION IS RELEASED, AND WHY THE ANTICIPATED HARM CAN BE REASONABLY EXPECTED TO OCCUR.

The justification for withholding of information from documents must be persuasive in articulating what harm will occur if the data is released. The exemptions will be applied with "specific reference to such harm" and must be document-specific, not boilerplate.

This narrative justification may be classified if it will aid in explaining the anticipated harm that would result from disclosure. The two purposes for this narrative are to ensure that our decision to withhold information is well founded on need, and to serve as the basis for any sworn Declaration which the Director may be required to make to justify the withholding, if our claim of exemption is challenged in court.

ENCLOSURE 3

5. RESPONDING ACTIVITIES MUST ENSURE ALL ACTIONS ARE COMPLETED WITHIN THEIR ORGANIZATIONS BEFORE A RESPONSE IS FORWARDED TO PSP/FOIA.

If further review is needed by another Center or agency outside of DIA, then so advise the FOIA Office through the cover memorandum. The FOIA Office will then coordinate any additional reviews.

6. PROVIDE A SEARCH REPORT, COPIES OF RESPONSIVE DOCUMENTS, AND AN INDEX OF FORWARDED DOCUMENTS TO PSP/FOIA.

the reviewing activity must provide unedited copies of responsive documents to PSP/FOIA. For each document containing information recommended for withholding, the reviewer must also provide an additional copy of that document with the recommended portion to be removed, bracketed, and notated with the exemption number or paragraph which supports the withholding.

The index must reference the originating activity, serial or message number, document date, title or subject, and classification for each document. The index should be grouped by originator, and arranged chronologically, oldest first, within groups. The office symbol for the activity preparing the index, and date of preparation, must be annotated on each page of the index.

7. SEARCH REPORTS MUST BE IN WRITING AND SPECIFICALLY IDENTIFY THE FILES OR DATABASES SEARCHED, SEARCH PARAMETERS, AND NAMES OF PERSON(S) CONDUCTING THE SEARCH.

Negative reports are required. Oral replies will not clear the tasker.

8. TASKER WILL NOT BE CLOSED UNTIL ALL FOIA PROCESSING PROCEDURES ARE COMPLIED WITH.

PSP/FOIA will clear responding DIA activities through the Automatic Tasking System when all reviews within the tasked activity are completed and PSP/FOIA receives the required documents and index, or a written statement that no responsive documents were located.

9. AFTER MAKING THE FINAL AGENCY RELEASABILITY REVIEW, PSP/FOIA WILL PREPARE FOR RELEASE, THOSE DOCUMENTS THAT ARE NOT BEING WITHHELD.

The FOIA Office will continue to remove classification markings from documents to avoid mistaking the unclassified released document as still containing classified information. In addition, the authors' names will normally be withheld from DIA-originated material as an internal matter of a relatively trivial nature and not of genuine public interest, and to protect employees from an unwarranted invasion of their personal privacy.

ENCLOSURE 3